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**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Stop Code 1170  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: CS Docket No. 95-139

Dear Mr. Caton:

Enclosed please find the original and four copies of Joint Comments filed on behalf of six television stations in the Raleigh-Durham-Goldsboro market regarding the above-captioned rulemaking.

Should any questions arise in connection with this matter, please contact Elizabeth F. Crabill, Esq. of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Suite 1600, First Union Capitol Center, Raleigh, NC 27601 (tel. 919-839-0300).

Very truly yours,

  
Paul J. Feldman

pf:ik  
Enclosure

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Before the

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules to  
include the City of Fayetteville,  
North Carolina, in the "Raleigh  
Durham-Goldsboro" Television  
Market

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CS Docket No. 95-139

To: The Deputy Chief, Cable Services Bureau

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**JOINT COMMENTS**

Capital Cities/ABC, Inc., licensee of Television Station WTVD(TV), Channel 11,  
Durham, North Carolina; Capitol Broadcasting Company, Inc., licensee of Television Station  
WRAL(TV), Channel 5, Raleigh, North Carolina; Tar Heel Broadcasting, Inc., licensee of  
Television Station WRAZ (TV), Channel 50, Raleigh, North Carolina; Delta Broadcasting, Inc.,  
licensee of Television Station WKFT(TV), Channel 40, Fayetteville, North Carolina; Raleigh  
(WRDC-TV) Licensee, Inc., licensee of Television Station WRDC(TV), Channel 28, Durham,  
North Carolina; and WLFL Licensee, Inc., licensee of Television Station WLFL(TV), Channel 22,  
Raleigh, North Carolina submit these joint comments in support of their petition to amend Section  
76.51 of the Rules (47 C.F.R. §76.51) to include the City of Fayetteville, North Carolina as a  
designated community in the "Raleigh-Durham-Goldsboro" North Carolina television market.

# I

## Preliminary Statement

1. Section 76.51 of the Commission's Rules lists the nation's top 100 television markets and one or more core cities within each market. Some markets list more than one designated core city and are referred to as "hyphenated markets." The "Raleigh-Durham-Goldsboro" market is an example. The market rankings and city designations specified for each market by Section 76.51 have important regulatory implications. They serve to define the territorial scope of the FCC's program exclusivity rules and the compulsory license for cable systems under federal copyright law.<sup>1</sup> Section 76.51's market listings and city designations were originally established in 1972, but in response to changes in local markets and to assure regulatory parity for competing stations in each market, the Commission, on various occasions, has amended the rule to alter the market rankings and designated cities within each market. In recognition of the fact that the rule's market rankings and city designations are outdated, Congress, in adopting the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), required the Commission to make revisions as necessary, to update the rankings and the city designations. See, 47 U.S.C. §614.

2. The Commission, in adopting signal carriage rules to implement the Cable Act, elected to review each market on a case-by-case basis and noted that petitions requesting market redesignation which show a "commonality" between a city proposed to be added and the market as a whole will be considered under an expedited rule making procedure. See Report and Order

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<sup>1</sup>Specifically, Section 76.51 implicates the Commission's territorial exclusivity rule [§73.658(m)], the network non-duplication rule [§76.92], the syndicated program exclusivity rule [§76.151], and cable compulsory license under 17 U.S.C. §111(f).

in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n. 150 (1993).

3. Fayetteville is located within and is a "core" city--economically, socially and culturally--in the Raleigh-Durham-Goldsboro market. During the years since Section 76.51's market rankings and the city designations were adopted, the Raleigh-Durham-Goldsboro television market has undergone enormous growth and change. Section 76.51, for example, ranks Raleigh-Durham-Goldsboro as the 73rd market; Nielsen now ranks it 30th. That fact alone is reflective of the dramatic and substantial change that has taken place within the market. Much of the change is attributable to the growth of Fayetteville, and Cumberland County in which Fayetteville is located. Cumberland County outranks Durham County, in which the City of Durham is located, and Wayne County, in which the City of Goldsboro is located, in television households, in population and in retail sales. Fayetteville has become an integral and essential economic component of the Raleigh-Durham-Goldsboro market, and for Section 76.51 to continue to exclude it is to ignore a fundamental economic reality of the market.

4. Last year the Commission added Goldsboro to the Raleigh-Durham hyphenated market. See Report and Order in MM Docket No.93-212, 9 FCC Rcd 4387 (1994). The Commission found that television stations licensed to Raleigh, Durham, and Goldsboro compete for programming, audience and advertisers, and that sufficient evidence had been presented to demonstrate commonality between the proposed community to be added to the market designation and the market as a whole. As the chart on Page 7 demonstrates, Fayetteville is the second largest city in this market with \$1,560,000,000 in gross city retail sales; and Cumberland is the second largest county with a population of 272,566 and 96,100 TV households. If Goldsboro

merited inclusion in this market, then Fayetteville, a much larger and more integral community in this market, must be included as well. Indeed, the recent inclusion of Goldsboro to the Raleigh-Durham market listing adds urgency to the proposal to add Fayetteville. Adding one without the other preserves an inequity in the market which is contrary to the purpose of Section 76.51.

5. Of the six petitioning stations, WRAL, WRAZ and WLFL are licensed to Raleigh, WTVD and WRDC are licensed to Durham, and WKFT is licensed to Fayetteville. WTVD is owned by and affiliated with the ABC Network; WRAL is affiliated with the CBS Network; WLFL is affiliated with the Fox Network; WRDC is affiliated with the UPN Network; WRAZ is affiliated with the WB Network; and WKFT is an independent.<sup>2</sup> Neither WKFT, Fayetteville, nor WRAZ, Raleigh, nor WLFL, Raleigh, were operating in 1972 when Section 76.51 was adopted. These six stations compete head-to-head throughout the market for programming, viewers and advertising revenues, yet they are united in support of this petition. The requested market redesignation would subject each of them to the same regulatory burdens and requirements. It is indisputable that regulatory parity in these circumstances would create a more competitive environment within the market which, in turn, would produce a more vigorous and competitive local television marketplace--a result that would benefit, not only the petitioning stations, but the region's local advertisers and viewers as well.

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<sup>2</sup>An additional independent station (WFAY) is licensed to Fayetteville. That station--unlike WKFT, Fayetteville--does not compete on a "market-wide" basis within the Raleigh-Durham-Goldsboro ADI.

II  
The Addition of  
Fayetteville Would Be Consistent  
With The Commission's Longstanding  
Criteria for Market Redesignations

6. The Commission has traditionally considered four factors in evaluating market redesignation petitions: (1) the distance between the existing designated cities and the proposed city; (2) whether the redesignation would extend a station's cable coverage rights beyond its Grade B contour;<sup>3</sup> (3) whether the petitioning station or stations have demonstrated a need for the redesignation; and finally, (4) whether the public interest would be served by the redesignation. See Major Television Markets (Fresno-Visalia, California), 57 RR 2d 1122, 1124 (1985). The Commission has noted that these factors tend to indicate the addition of a city to a market would more accurately reflect the "areas where stations can and do both actually and logically, compete." See, Notice of Proposed Rule Making, MM Docket 92-3233 (Little Rock, Arkansas), Par. 3 (Released August 19, 1993). See also, Cable Television Report and Order, 36 FCC 2d 143, 176 (1972).

Applying the first of these criteria, the Commission concluded that a television station in Rome, Georgia, was "unavoidably competitive" with television stations in Atlanta some 60 miles away and added Rome, Georgia, to the Atlanta market. TV 14, Inc., 7 FCC Rcd 8591, 8592, (1992). Similarly, the Commission added Clermont, Florida, to the Orlando-Daytona Beach-

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<sup>3</sup>Under the new Cable Act, a commercial station's must carry rights are determined by the boundaries of the ADI in which the station is located—not, as was formerly the case, by its coverage contour or its distance from a market's designated cities. Thus, the second factor enumerated above which is cited in the Commission's 1985 ruling in the Fresno case, infra, may not now be applicable or relevant in a market redesignation proceeding.

Melbourne-Cocoa market based on its finding that Clermont Station was "unavoidably competitive with other stations in the market and it would thus be anomalous to treat it as other than a market station." Press Television Corporation, 4 FCC Red 8799 (1989), on reconsideration, 6 FCC Rcd 6563 (1991). Champaign, Illinois, is located over 80 miles from Springfield, and is listed in Section 76.51 of the Rules as a designated core city in the Springfield-Decatur-Champaign, Illinois market. Durham and Raleigh are separated by approximately 25 miles. Fayetteville is approximately 59 miles southwest of Raleigh and 72 miles south of Durham. The addition of Fayetteville to Raleigh-Durham-Goldsboro market is well within established precedent.

7. In addition to the relative proximity of Raleigh, Durham, Goldsboro, and Fayetteville each of the stations serves substantially the same geographical area. Four of the five Raleigh-Durham stations place (and the other almost places) a Grade A signal over Fayetteville. WKFT, Fayetteville, places a Grade A signal over both Raleigh and Durham. WLFL, WRDC, WRAL and WTVD are "significantly viewed" (within the meaning of Section 76.5(i) of the Commission's Rules) in Cumberland County in which Fayetteville is located, and WKFT is "significantly viewed" in Wake and Durham counties in which the cities of Raleigh and Durham are located.<sup>4</sup> The four petitioning Raleigh-Durham stations account for an incredible 62 percent of the average quarterly hour audience share in Cumberland County. (Nielsen 1993, Sun. - Sat. 7:00 a.m. - 1:00 a.m.)

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<sup>4</sup>WRAZ only recently signed on the air.

8. Due to the geographic proximity of these communities, there is a substantial commonality among the communities and they constitute a unified market. As noted earlier, Cumberland County (in which Fayetteville is located) is now the second largest county in the Raleigh-Durham-Goldsboro television market and contains 12 percent of the market's television households. The following chart depicts comparative populations, retail sales and television households.

<u>City</u>	<u>1991-1992 Gross City Retail Sales</u>	<u>County</u>	<u>1990 County Population</u>	<u>1991-1992 Gross County Retail Sales</u>	<u>1994 County Nielsen TV Households</u>
Raleigh	\$3,640,000,000	Wake	423,380	\$5,290,000,000	185,300
Fayetteville	\$1,560,000,000	Cumberland	274,566	\$1,980,000,000	96,100
Durham	\$1,550,000,000	Durham	181,835	\$1,740,000,000	77,300
Goldsboro	\$ 596,202,855	Wayne	104,666	\$ 840,779,359	40,100

These four cities constitute the economic and population anchor points of the Raleigh-Durham-Goldsboro television market.

9. The cable systems serving Raleigh, Durham, Goldsboro and Fayetteville also treat the four cities as one market. The cable system serving Fayetteville carries the five petitioning Raleigh-Durham stations, while the cable systems serving Raleigh and Durham carry WKFT, Fayetteville. Newspapers in Raleigh and Durham include WKFT, Fayetteville, in the television listings for the Raleigh-Durham-Goldsboro area, and the newspapers in Fayetteville include the Raleigh-Durham-Goldsboro television stations in their television listings.

10. WKFT, Fayetteville, has a sales office in Raleigh, and WRAL, Raleigh, and WTVD, Durham, have sales offices in Fayetteville. All of the stations' sales staffs regularly and

routinely call on advertisers in each of the three cities. WKFT, for example, indicates that as much as 20 percent of its local advertising revenue now comes from Raleigh and Durham.

11. Perhaps the best evidence that there is a "commonality" of interest between the four cities is the fact that these six highly competitive stations--three of which are licensed to Raleigh, one to Fayetteville and two to Durham--could achieve unanimity in their support of this petition. This, itself, speaks to Fayetteville's economic significance to the market.

12. Under the third and fourth factors, the justification for the requested market redesignation is regulatory parity among the stations which actually compete in this market, specifically parity under the Commission's territorial exclusivity and syndicated exclusivity rules. See, Sections 73.658(m) and 76.151.<sup>5</sup> Presently if WKFT, Fayetteville, should acquire the rights (at great expense) to broadcast a highly rated syndicated series such as "Murphy Brown" or "Married with Children," its area of exclusivity against other television stations is limited by Section 73.658(m) to 35 miles from Fayetteville. Thus, WKFT may not acquire exclusivity for its syndicated programs against broadcast of the same programs by local stations WTVD and WRDC which are licensed to Durham nor by WRAL and WLFL which are licensed to Raleigh. These are the very stations with whom WKFT competes day-to-day for viewers and advertising dollars. The same is true, in reverse, for the Raleigh-Durham-Goldsboro stations. While the Raleigh, Durham and Goldsboro stations may acquire program exclusivity against each other, they may not acquire it against WKFT, Fayetteville, whose transmitter is but a few miles from theirs, whose

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<sup>5</sup>The joint petitioners recognize that the Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994), minimizes the importance of the Section 76.51 market list as a determinant of copyright liability. However, as was indicated in the original Petition for Rulemaking, the primary purpose for seeking to add Fayetteville to the Raleigh-Durham-Goldsboro hyphenated market was to promote parity under the programming exclusivity rules.

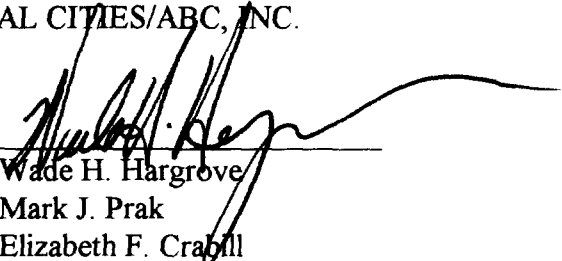
coverage and viewing pattern are comparative to theirs and whose sales personnel compete on a day-to-day basis against theirs in Raleigh, Fayetteville, Durham and Goldsboro. This regulatory anomaly is destructive of local competition--a result of which is harmful not only to the stations, but to local advertisers and viewers as well.

13. In summary, if Fayetteville were added to the market's designated core cities under Section 76.51, all of these highly competitive stations would be afforded regulatory parity, a result which would clearly serve the public interest.

Respectfully submitted,


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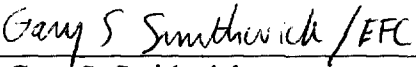
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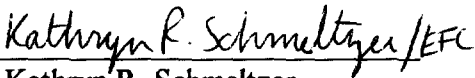
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